

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WELLS FAMILY TRUST, *et al*,

Plaintiffs,

v.

Civ. No. 23-234 MIS/KK

ELI GLOBAL, LLC, and
GREG E. LINDBERG,

Defendants.

**ORDER PERMITTING SERVICE BY PUBLICATION AND EXTENDING THE
DEADLINE FOR SERVICE OF DEFENDANT LINDBERG**

BEFORE THE COURT is Plaintiff's Renewed Motion for Alternative Service on Defendant Greg Lindberg and for an Extension of Time to Accomplish Such Service (the "Renewed Motion"). (Doc. 17.) In the Renewed Motion, Plaintiffs assert they have diligently tried to serve Defendant Lindberg under the Federal and New Mexico Rules of Civil Procedure without success. (*Id.*) They seek 1) leave to serve Defendant Lindberg by publication once a week for three consecutive weeks in a newspaper of general circulation in both Tampa, Florida (where Defendant Lindberg resides) and Albuquerque, New Mexico (where this case is pending) and 2) an extension of the deadline to serve Defendant Lindberg. (*Id.* at 7, 8); *see* Federal Rules of Civil Procedure 4(e), (m); New Mexico Rules of Civil Procedure 1-004(F), (K).

Having considered the Renewed Motion, the relevant law, and the record, the Court finds it well-taken and will grant it. Pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure,

an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by . . . following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made[.]

In New Mexico, service by publication is governed by Rule 1-004(K) NMRA. Plaintiffs' Renewed Motion substantially satisfies the pertinent requirements of Rule 1-004(K), includes a copy of the proposed notice that is compliant with Rule 1-004(K)(2), and certifies that a copy of the Renewed Motion was mailed to Defendant Lindberg at his last known addresses. *See* NMRA Form 4-209. The Court finds that Plaintiffs have attempted to serve Defendant Lindberg pursuant to Rule 1-004(F), the Albuquerque Journal is a newspaper of general circulation in the county where this action is pending, and the Tampa Bay Times is a newspaper of general circulation in the county in which Defendant Lindberg's addresses are located and reasonably appears is most likely to give him notice of the action. *See* Rule 1-004(K)(1). Furthermore, Plaintiffs have shown good cause for their failure to serve Defendant Lindberg within the 90-day deadline set in Rule 4(m). *See* Rule 4(m) (the Court must extend the 90-day deadline for service if the plaintiff shows good cause). Accordingly, the Court hereby **GRANTS** Plaintiffs' Renewed Motion.

IT IS THEREFORE ORDERED:

By **November 6, 2023**, Plaintiffs shall serve Defendant Lindberg by publishing the notice attached as Exhibit B to Plaintiff's Renewed Motion once each week for three consecutive weeks in the Tampa Bay Times in Hillsborough County, Florida (where Defendant Lindberg resides) and the Albuquerque Journal in Albuquerque, New Mexico (where this case is pending). Plaintiffs shall provide to the Clerk of Court proof of such publication in the form of an affidavit of publication signed by an officer or agent of the newspapers in which the notice of the action was published. *See* Rule 1-004(L) NMRA.



KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE